

**ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)**  
**Act 386 of 1998**

**PART 2**

**VENUE FOR PROBATE AND ADMINISTRATION, PRIORITY TO ADMINISTER, AND DEMAND  
FOR NOTICE**

**700.3201 Venue for first and subsequent estate proceedings; location of property.**

Sec. 3201. (1) Venue for the first informal or formal testacy or appointment proceeding after a decedent's death is 1 of the following:

- (a) The county where the decedent was domiciled at the time of death.
- (b) If the decedent was not domiciled in this state, in a county where property of the decedent was located at the time of death.

(2) Venue for a subsequent proceeding that is within the court's exclusive jurisdiction is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in subsection (3), in section 856 of the revised judicature act of 1961, MCL 600.856, or by supreme court rule.

(3) If the first proceeding described in subsection (1) was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(4) On motion by a party or on the court's own initiative, a proceeding's venue may be changed to another county by court order for the convenience of the parties and witnesses, for the attorneys' convenience, or if an impartial trial cannot be had in the county where the action is pending.

(5) For the purpose of aiding determinations concerning location of property that may be relevant in cases involving nondomiciliaries, other than a debt evidenced by investment or commercial paper or other instrument in favor of a nondomiciliary, a debt is located where the debtor resides or, if the debtor is a person other than an individual, at the place where the debtor has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

**700.3202 Appointment or testacy proceedings; conflicting claim of domicile in another state.**

Sec. 3202. If conflicting claims as to the decedent's domicile are made in a formal testacy or appointment proceeding commenced in this state and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state shall stay, dismiss, or permit suitable amendment in the proceeding in this state unless it is determined that this state's proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced is determinative in this state's proceeding.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

**700.3203 Priority among persons seeking appointment as personal representative.**

Sec. 3203. (1) For either formal or informal proceedings, subject to subsection (2), persons who are not disqualified have priority for appointment as personal representative in the following order:

(a) The person with priority as determined by a probated will including a person nominated by a power conferred in a will.

(b) The decedent's surviving spouse if the spouse is a devisee of the decedent.

(c) Other devisees of the decedent.

(d) The decedent's surviving spouse.

(e) Other heirs of the decedent.

(f) After 42 days after the decedent's death, the nominee of a creditor if the court finds the nominee suitable.

(g) The state or county public administrator if any of the following apply:

(i) No interested person applied or petitioned for appointment of a personal representative within 42 days after the decedent's death.

(ii) The decedent died apparently leaving no known heirs.

(iii) There is no spouse, heir, or beneficiary under a will who is a United States resident and is entitled to a distributive share in the decedent's estate.

(2) An objection to the appointment of a personal representative may be made only in a formal proceeding. If an objection is made, the priorities prescribed by subsection (1) apply except in either of the following circumstances:

(a) If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, on petition of creditors, the court may appoint any qualified person.

(b) If a devisee or heir who appears to have a substantial interest in the estate objects to the appointment of a person whose priority is not determined by will, the court may appoint a person who is acceptable to the devisees and heirs whose interests in the estate appear to be worth in total more than 1/2 of the probable distributable value or, if no person is acceptable to these devisees and heirs, any suitable person.

(3) A person entitled to letters under subsection (1)(b) to (e) may nominate a qualified person to act as personal representative. A person may renounce his or her right to nominate or to an appointment by filing an appropriate writing with the court. If 2 or more persons share a priority, those of them who do not renounce shall concur in nominating another to act for them or in applying for appointment.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.3204 Representation by conservator or guardian; appointment without priority; disqualification.**

Sec. 3204. (1) A conservator of a protected individual's estate or, if there is no conservator, a guardian of a minor or legally incapacitated individual may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the devisees and heirs that the protected individual or ward would have if qualified for appointment.

(2) Except as provided in sections 3308(1)(f) and 3310, a person who does not have priority, including priority resulting from renunciation or nomination determined under this section or section 3203, shall be appointed only in a formal proceeding. Before appointing a person without priority, the court shall determine that persons having priority have been notified of the proceedings and have failed to request appointment or to nominate another person for appointment, and that administration is necessary.

(3) A person is not qualified to serve as a personal representative if the person is either under the age of 18 or is a person whom the court finds unsuitable in formal proceedings.

(4) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except if the decedent's will nominates different persons to be personal representatives in this state and in the state of domicile. The domiciliary personal representative may nominate another person, who then has the same priority as the domiciliary personal representative.

(5) This section and section 3203 govern priority for appointment of a successor personal representative, but do not apply to the selection of a special personal representative.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.3205 Demand for notice of order or filing concerning decedent's estate.**

Sec. 3205. A person who wants notice of any order or filing pertaining to a decedent's estate in which the person has a financial or property interest may file a demand for notice with the court at any time after the decedent's death stating the decedent's name, the nature of the person's interest in the estate, and the address of the person or the person's attorney. If a proceeding is not pending at the time a demand is filed under this section, the person filing the demand must pay the fee required to commence a proceeding. The person filing a demand shall mail a copy of the demand to the decedent's attorney, if known, to the personal representative if one has been appointed, and to the personal representative's attorney. After filing the demand, the person is an interested person entitled to notice as provided in section 1401 and the other provisions of this act.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.3206 Right and power to make decisions about funeral arrangements and handling, disposition, or disinterment of decedent's body; presumption; priority; shared rights and powers; personal representative or nominated personal representative; guardian; special personal representative; additional persons; reasonable attempt to locate person; effect of section on anatomical gift; "nominated personal representative" defined.**

Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216, and to part 28 and article 10 of the public

health code, 1978 PA 368, MCL 333.2801 to 333.2899 and 333.10101 to 333.11101, a person with priority under subsections (2) to (4) or acting under subsection (5), (6), (7), or (8) is presumed to have the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including, but not limited to, decisions about cremation, and the right to possess cremated remains of the decedent. The handling, disposition, or disinterment of a body shall be under the supervision of a person licensed to practice mortuary science in this state.

(2) The surviving spouse or, if there is no surviving spouse, the individual or individuals 18 years of age or older, in the highest order of priority under section 2103, and related to the decedent in the closest degree of consanguinity, have the rights and powers under subsection (1).

(3) If the surviving spouse or the individual or individuals with the highest priority as determined under subsection (2) do not exercise their rights or powers under subsection (1) or cannot be located after a good-faith effort to contact them, the rights and powers under subsection (1) may be exercised by the individual or individuals in the same order of priority under section 2103 who are related to the decedent in the next closest degree of consanguinity. If the individual or each of the individuals in an order of priority as determined under this subsection similarly does not exercise his or her rights or powers or cannot be located, the rights or powers under subsection (1) pass to the next order of priority, with the order of priority being determined by first taking the individuals in the highest order of priority under section 2103 and then taking the individuals related to the decedent in the closest or, as applicable, next closest degree of consanguinity in that order of priority.

(4) If 2 or more individuals share the rights and powers described in subsection (1) as determined under subsection (2) or (3), the rights and powers shall be exercised as decided by a majority of the individuals. If a majority cannot agree, any of the individuals may file a petition under section 3207.

(5) If no individual described in subsections (2) and (3) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9), and if subsection (6) does not apply, then the personal representative or nominated personal representative may exercise the rights and powers under subsection (1), either before or after his or her appointment.

(6) If no individual described in subsections (2) and (3) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9), and if the decedent was under a guardianship at the time of death, the guardian may exercise the rights and powers under subsection (1) and may make a claim for the reimbursement of burial expenses as provided in section 5216 or 5315, as applicable.

(7) If no individual described in subsections (2) and (3) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (9), if the decedent died intestate, and if subsection (6) does not apply, a special personal representative appointed under section 3614(c) may exercise the rights and powers under subsection (1).

(8) If there is no person under subsections (2) to (7) to exercise the rights and powers under subsection (1), 1 of the following, as applicable, shall exercise the rights and powers under subsection (1):

(a) Unless subdivision (b) applies, the county public administrator, if willing, or the medical examiner for the county where the decedent was domiciled at the time of his or her death.

(b) If the decedent was incarcerated in a state correctional facility at the time of his or her death, the director of the department of corrections or the designee of the director.

(9) An attempt to locate a person described in subsection (2) or (3) is sufficient if a reasonable attempt is made in good faith by a family member, personal representative, or nominated personal representative of the decedent to contact the person at his or her last known address, telephone number, or electronic mail address.

(10) This section does not void or otherwise affect an anatomical gift made under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123.

(11) As used in this section, "nominated personal representative" means a person nominated to act as personal representative in a will that the nominated person reasonably believes to be the valid will of the decedent.

**History:** Add. 2006, Act 299, Imd. Eff. July 20, 2006;—Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008.

**Popular name:** EPIC

### **700.3207 Petition; venue; hearing date; notice of hearing; funeral establishment as petitioner; factors to be considered in court decision.**

Sec. 3207. (1) If there is a disagreement as described in section 3206(4) or if 1 or more of the individuals described in section 3206(2) or (3) cannot be located, 1 or more of the following may petition the court to determine who has the authority to exercise the rights and powers under section 3206(1):

(a) An individual with the rights and powers under section 3206(1).

(b) A funeral establishment that has custody of the decedent's body.

(2) Venue for a petition filed under subsection (1) is in the county in which the decedent was domiciled at the time of death.

(3) On receipt of a petition under this section, the court shall set a date for a hearing on the petition. The hearing date shall be as soon as possible, but not later than 7 business days after the date the petition is filed. Notice of the petition and the hearing shall be served not less than 2 days before the date of the hearing on every individual who has highest priority as determined under section 3206(2) and (3), unless the court orders that service on every such individual is not required. Unless an individual cannot be located after a reasonable good-faith effort has been made to contact the individual, service shall be made on the individual personally or in a manner reasonably designed to give the individual notice. Notice of the hearing shall include notice of the individual's right to appear at the hearing. An individual served with notice of the hearing may waive his or her rights. If written waivers from all persons entitled to notice are filed, the court may immediately hear the petition. The court may waive or modify the notice and hearing requirements of this subsection if the decedent's body must be disposed of promptly to accommodate the religious beliefs of the decedent or his or her next of kin.

(4) If a funeral establishment is the petitioner under this section, the funeral establishment's actual costs and reasonable attorney fees in bringing the proceeding shall be included in the reasonable funeral and burial expenses under section 3805(b) or the court may assess such costs and fees against 1 or more parties or intervenors.

(5) In deciding a petition brought under this section, the court shall consider all of the following, in addition to other relevant factors:

(a) The reasonableness and practicality of the funeral arrangements or the handling or disposition of the body proposed by the person bringing the action in comparison with the funeral arrangements or the handling or disposition of the body proposed by 1 or more individuals with the rights and powers under section 3206(1).

(b) The nature of the personal relationship to the deceased of the person bringing the action compared to other individuals with the rights and powers under section 3206(1).

(c) Whether the person bringing the action is ready, willing, and able to pay the costs of the funeral arrangements or the handling or disposition of the body.

**History:** Add. 2006, Act 299, Imd. Eff. July 20, 2006.

**Compiler's note:** In subsection (4), the citation to "section 3805(b)" evidently should read "section 3805(1)(b)".

**Popular name:** EPIC

### **700.3208 Filing in circuit court to challenge presumption; venue.**

Sec. 3208. (1) An individual other than a person with priority under subsections (2) to (4) or acting under subsection (5), (6), (7), or (8), may file an action in the circuit court to challenge the presumption to be determined as the individual who has the authority to exercise the rights and powers under section 3206(1).

(2) Venue for an action filed under this section is in the county in which the decedent was domiciled at the time of death.

**History:** Add. 2006, Act 299, Imd. Eff. July 20, 2006.

**Popular name:** EPIC

### **700.3209 Funeral establishment not civilly liable.**

Sec. 3209. (1) A funeral establishment is not required to file a petition under section 3207 and is not civilly liable for not doing so.

(2) The order of priority determined under section 3206(2) and (3) may be relied upon by a funeral establishment. A funeral establishment is not a guarantor that a person exercising the rights and powers under section 3206(1) has the legal authority to do so. A funeral establishment does not have the responsibility to contact or independently investigate the existence of relatives of the deceased, but may rely on information provided by family members of the deceased.

(3) A funeral establishment, holder of a license to practice mortuary science issued by this state, cemetery, crematory, or an officer or employee of a funeral establishment, holder of a license to practice mortuary science issued by this state, cemetery, or crematory may rely on the terms of sections 3206 and 3207 and this section and the instructions of a person described in section 3206(2) to (8), or of an individual determined in an action under section 3208 to be the party to exercise the rights and powers under section 3206(1), regarding funeral arrangements and the handling, disposition, or disinterment of a body and is not civilly liable to any person for the reliance if the reliance was in good faith.

**History:** Add. 2006, Act 299, Imd. Eff. July 20, 2006.

**Popular name:** EPIC